REMARKS

The Examiner has rejected Claims 1, 3, 6-7, 12-14, 16-20, 25-31, 34, and 38-40 under 35 U.S.C. 103(a) as being unpatentable over Krishnan et al. (U.S. Patent No. 6,075,863), in view of Chi (U.S. Patent No. 6,006,329). Applicant respectfully disagrees with such rejection.

With respect to independent Claim 29, the Examiner has relied on Col. 2, lines 56-65 and Col. 5, lines 16-18 from the Krishnan reference to make a prior art showing of applicant's claimed "processor positioned on a network adapter coupled between an end-point computer and a network, the processor including a packet assembly module, random access memory (RAM), and a scanner module. the network adapter being installed on the end-point computer."

Applicant respectfully disagrees and points out that the above excerpts relied on by the Examiner merely teach that the "[m]odem... also includes [a] controller... RAM... ROM... and modem circuitry" and that the "[c]ontroller... controls the operation of [the] modem circuitry... in accordance with program instructions stored in RAM... and ROM" (Col. 2, lines 57-60 – emphasis added). Additionally, the excerpts teach that "applets may be used to scan incoming data for potentially hazardous programs" (Col. 5, lines 16-17).

However, merely disclosing that a controller included in a modem controls the modem circuitry and that applets may be used to scan incoming data for hazardous programs, as in Krishnan, fails to teach a "processor including a packet assembly module, random access memory (RAM), and a scanner module, the network adapter being installed on the end-point computer" (emphasis added), as claimed by applicant.

In addition, it appears that the Examiner has relied on an inherency argument regarding the above emphasized claim limitations. Specifically, the Examiner has argued that "it is implied if not inherent that there is a packet assembly module in order to

receive data from the outside." Applicant respectfully disagrees, and asserts that in view of the arguments made hereinabove, any such inherency argument has been adequately rebutted, and a notice of allowance or a specific prior art showing of such claim features, in combination with the remaining claim elements is respectfully requested. (See MPEP 2112)

In the Office Action dated 10/16/2007, the Examiner has argued that "Krishnan discloses that applets executed on the modem may be used to scan incoming data for hazardous programs (see column 5, lines 16-18)." Further, the Examiner has argued that "Krishnan also shows that the modem can send and receive packet data (see column 6, lines 39-42)."

Applicant respectfully disagrees and notes that the above excerpts relied on by the Examiner merely teach that "applets may be used to scan incoming data for potentially hazardous programs" (Col.5, lines 16-17 – emphasis added). Further, the above excerpts teach that "analog modem circuitry 24 may instead comprise circuitry implementing a digital line connectors, a packet radio transceiver, a local area network connector, or cable modem" (Col. 6, lines 39-41).

However, merely disclosing that applets may be used to scan incoming data, in addition to disclosing that analog modem circuitry may comprise digital line connectors, a packet radio transceiver, a local area network connector, or a cable modem, fails to teach a "processor including a packet assembly module, random access memory (RAM), and a scanner module, the network adapter being installed on the end-point computer" (emphasis added), as claimed by applicant.

Further, in the Office Action dated 10/16/2007, the Examiner has argued that "[i]n order to receive packets and determine which application to pass the information to, it is absolutely inherent that a packet assembly module exists to figure out where to deliver the packets once they are received by the modem." The Examiner has additionally

argued that "[i]f there were no packet assembly module, pieces of data would be received by the modem without any direction to go after they have been received."

Further still, the Examiner has argued that "in order to scan for hazardous programs, an assembly module must exist in order to piece the packet data together and decide whether the information being received is hazardous." The Examiner has also argued that "data is coming into the modem from all over the network" and that "[i]t is up to the modem to assemble the packet data in order to receive only the packets that have been requested by the user, or else data that was intended for another computer will end up being processed by the modem." Additionally, the Examiner has argued that "the packet assembly module is merely an interface that receives packets and passes them onto the higher layers of communication."

Applicant respectfully disagrees. First, applicant respectfully asserts that the excerpts from Krishnan relied on by the Examiner do not even suggest "determining which application to pass the information to," as noted by the Examiner. For example, the excerpts from Krishnan relied on by the Examiner only generally disclose scanning incoming data, as noted above. However, even assuming *arguendo* that Krishnan discloses such subject matter noted by the Examiner, applicant points out that it is not inherent that "[i]n order to receive packets and determine which application to pass the information to,...a packet assembly module exists to figure out where to deliver the packets once they are received by the modem," as the Examiner notes. Applicant respectfully points out that a packet assembly module is simply not inherently utilized for "determining which application to pass the information to," as the Examiner notes.

Second, applicant respectfully asserts that the excerpts from Krishnan relied on by the Examiner also do not suggest that "[i]t is up to the modem to assemble the packet data in order to receive only the packets that have been requested by the user, or else data that was intended for another computer will end up being processed by the modem," as noted by the Examiner. Applicant again emphasizes that the excerpts from Krishnan relied on by the Examiner only generally disclose scanning incoming data, as noted

above. Further, even assuming *arguendo* that Krishnan discloses such subject matter noted by the Examiner, applicant respectfully asserts that it is not inherent that "[i]t is up to the modem to assemble the packet data in order to receive only the packets that have been requested by the user," as the Examiner notes. In particular, a packet assembly module is simply not inherently utilized to "receive only the packets that have been requested by the user," as noted by the Examiner.

Third, applicant respectfully disagrees with the Examiner's argument that "the packet assembly module is merely an interface that receives packets and passes them onto the higher layers of communication." Applicant respectfully asserts that applicant's claimed "packet assembly module" is to be read in view of its plain and ordinary meaning. Clearly, a packet assembly module is not "an interface that receives packets and passes them onto the higher layers of communication," as alleged by the Examiner.

Thus, in response to the Examiner's reliance on an inherency argument regarding applicant's above emphasized claim limitations, and in view of the arguments made hereinabove, any such inherency argument has been adequately rebutted, and a notice of allowance or a specific prior art showing of such claim features, in combination with the remaining claim elements is respectfully requested. (See MPEP 2112)

Additionally, with respect to the independent claims, the Examiner has relied on Col. 5, lines 16-23 from the Krishnan reference to make a prior art showing of applicant's claimed technique "wherein the processor is capable of determining whether received packets are of interest, passing received packets that are not of interest to the end-point computer, and scanning received packets that are of interest" (see this or similar, but not necessarily identical language in the independent claims).

Applicant respectfully notes that the excerpt relied on by the Examiner merely teaches that "applets may be used to scan incoming data for potentially hazardous programs" and that "[b]y automatically scanning data transferred through [the] modem...

the modem may discard the offending transfer or may alert the user to a potential rogue program" (Col. 5, lines 16-23 – emphasis added).

However, automatically scanning incoming data, as in Krishnan, does not teach a technique "wherein the processor is capable of determining whether received packets are of interest" (emphasis added), as claimed by applicant. In fact, automatically scanning incoming data for potentially hazardous programs, as in Krishnan, *teaches away* from "determining whether received packets are of interest" (emphasis added), as claimed by applicant. The Examiner is reminded that the *prima facie* case of obviousness may be rebutted by showing that the art, in any material respect, teaches away from the claimed invention. *In re Geisler*, 116 F.3d 1465, 1471, 43 USPQ2d 1362, 1366 (Fed. Cir. 1997).

Additionally, automatically scanning incoming data, as in Krishnan, does not teach a technique "wherein the processor is capable of... passing received packets that are not of interest to the end-point computer" (emphasis added), as claimed by applicant. Further, automatically scanning incoming data, as in Krishnan, also fails to teach a technique "wherein the processor is capable of... scanning received packets that are of interest" (emphasis added), as claimed by applicant.

In the Office Action dated 10/16/2007, the Examiner has argued that "Krishnan teaches that packets are scanned for potentially hazardous programs" and that "[t]he Examiner believes that the 'packets of interest' are considered packets that contain the potentially hazardous programs." Further, the Examiner has argued that "[w]hile the processor performs the scanning, the packets of interest are determined and [are] either discarded or trigge[r] an alert for the user that a potential rogue program is found."

Further still, the Examiner admits that "[i]n Krishnan's system, it appears that all packets are scanned (i.e. the ones of interest and the ones not of interest)" and has argued that "it is not claimed that the ones not of interest are not scanned." The Examiner has also argued that "[t]herefore, Krishnan's system shows that the processor is capable of

scanning received packets that are of interest and either discarding them or alerting the user to a potential rogue program."

Applicant respectfully disagrees. Determining that packets are of interest based on the scanning, as suggested by the Examiner to be taught in Krishnan, fails to meet applicant's claimed technique "wherein the processor is capable of determining whether received packets are of interest, passing received packets that are not of interest to the end-point computer, and scanning received packets **that are of interest**" (emphasis added), as claimed.

In addition, applicant again emphasizes that the excerpt from Krishnan relied on by the Examiner only discloses automatically scanning incoming data for potentially hazardous programs, which does not even *suggest* "determining whether received packets are of interest" and "scanning received packets that are of interest" (emphasis added), as claimed by applicant. In fact, automatically scanning incoming data for potentially hazardous programs, as in Krishnan, *teaches away* from "determining whether received packets are of interest" and "scanning received packets that are of interest" (emphasis added), as claimed by applicant.

Moreover, applicant respectfully points out that the excerpt from Krishnan relied on by the Examiner only discloses automatically scanning incoming data and discarding the transfer or alerting the user, as noted above, which does not teach a technique "wherein the processor is capable of... passing received packets that are not of interest to the end-point computer" (emphasis added), as claimed by applicant.

Still yet, in the Office Action dated 10/16/2007, it appears that the Examiner has also relied on an inherency argument regarding the above emphasized claim limitations. Specifically, the Examiner has argued that "[i]n considering the packets that are not of interest being sent to the end-point computer, it is inherent that the packets are sent to the end-point computer because the job of the modem is to receive packets and send them to

the end-point computer and they are not of interest so they will not be discarded or alert the user of a potential rogue program."

Applicant respectfully disagrees, and asserts that in view of the arguments made hereinabove, any such inherency argument has been adequately rebutted, and a notice of allowance or a specific prior art showing of such claim features, in combination with the remaining claim elements is respectfully requested. (See MPEP 2112)

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above. Thus, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Applicant further notes that the prior art is also deficient with respect to the dependent claims. For example, with respect to Claim 6 et al., the Examiner has relied on Col. 5, lines 16-32 in Krishnan to make a prior art showing of applicant's claimed technique "wherein the manner in which the scanning is performed is capable of being user-configured."

Applicant respectfully asserts that the above reference excerpt relied on by the Examiner only generally discloses that "applets may be used to scan incoming data for potentially hazardous programs," and that an "applet may prioritize incoming messages based on a user specified criteria." However, only generally disclosing scanning incoming data does not meet applicant's claimed technique "wherein the manner in which the scanning is performed is capable of being user-configured" (emphasis added), as claimed. Further, disclosing prioritizing incoming messages based on a user specified criteria, as in Krishnan, fails to even suggest that "the manner in which the scanning is performed is capable of being user-configured" (emphasis added), as claimed.

In addition, with respect to Claim 30, the Examiner has relied on Col. 5, lines 24-30 from the Krishnan reference to make a prior art showing of applicant's claimed technique "wherein the content scanning enforces operational policies of an organization."

Applicant respectfully notes that the above reference excerpt relied on by the Examiner merely discloses that "an applet may provide filtering of 'junk e-mail' or other unwanted data" and that "an applet may prioritize incoming messages based on a user specified criteria, arranging to deliver the most urgent message first" (Col.5, lines 24-30 – emphasis added).

However, merely filtering junk email, in addition to prioritizing incoming messages based on user criteria, does not teach a technique "wherein the content scanning enforces operational policies of an organization" (emphasis added), as claimed by applicant.

Since at least the third element of the *prima facie* case of obviousness has not been met, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Still yet, applicant brings to the Examiner's attention the subject matter of new Claims 42-43 below, which are added for full consideration:

"wherein a predetermined amount of the received packets are assembled for determining whether the received packets are of interest" (see Claim 42); and

"wherein the received packets that are not of interest to the end-point computer bypass the scanning" (see Claim 43).

Again, a notice of allowance or a proper prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P056).

Respectfully submitted,
Zilka-Kotab, PC

/KEVINZILKA/

Kevin J. Zilka
Registration No. 41,429

P.O. Box 721120
San Jose, CA 95172-1120
408-505-5100